

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMMY PHILLIPS,

Petitioner,

v.

Case No. 09-20075;12-10851-BC
Honorable Thomas L. Ludington

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION,
DENYING PETITIONER'S MOTION TO VACATE SENTENCE,
GRANTING RESPONDENT'S MOTION TO DISMISS

Petitioner Jammy Phillips filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. On October 9, 2012, Magistrate Judge Charles E. Binder issued a report recommending the motion be denied. Judge Binder maintained that no material factual dispute existed to warrant an evidentiary hearing. Rep. & Rec. 11, ECF No. 50. As of today's date, no party has filed any objections to the magistrate judge's report and recommendation. The election to not file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Additionally, Petitioner's failure to object to the magistrate judge's Report and Recommendation constitutes a waiver of his right to appeal. *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). *See also United States v. Campbell*, 261 F.3d 628, 631–32 (6th Cir. 2001) (The defendant waived his right to appeal by failing to file objections to magistrate judge's Report and Recommendation); *Arn*, 474 U.S. at 155 (upholding 6th Circuit practice against due process challenge). Therefore, a certificate of appealability is not warranted in this case.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 50, is **ADOPTED**.

It is further **ORDERED** that Petitioner's motion to vacate sentence, ECF No. 36, is **DENIED**.

It is further **ORDERED** that Respondent's Motion to Dismiss Petitioner's Motion, ECF No. 44, is **GRANTED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

Dated: November 6, 2012

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail, and on Jammy Phillips #42397-039, Gilmer FCI, P.O. Box 6000, Glenville, WV 26351 by first class U.S. mail on November 6, 2012.

s/Tracy A. Jacobs
TRACY A. JACOBS